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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THE WHITING-TURNER CONTRACTING
COMPANY, a Maryland corporation,

Plaintiff,

vs.

MOLLERUP GLASS COMPANY, a Utah
corporation; EMPLOYERS MUTUAL
CASUALTY COMPANY, an Iowa
corporation; and DOES 1-25, inclusive,

Defendants.

Case No.

**DEFENDANTS MOLLERUP GLASS
COMPANY'S AND EMPLOYERS
MUTUAL CASUALTY COMPANY'S
NOTICE OF REMOVAL**

PLEASE TAKE NOTICE THAT Defendants Mollerup Glass Company ("Mollerup") by and through its counsel, Eric Zimbelman and the law firm of PEEL BRIMLEY LLP, and Employers Mutual Casualty Company ("EMCC"), by and through its counsel, Kurt C. Faux and Faux Law Group, hereby remove this action from the Eighth Judicial District Court for Clark County, Nevada, Case No. A-24-907508-C to the United States District Court for the District of Nevada. Federal jurisdiction exists over these proceedings pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 because there is complete diversity between the parties and because the amount in controversy exceeds \$75,000.00. In support of removal, Mollerup states:

I. INTRODUCTION AND BACKGROUND

This action arises from a dispute between Plaintiff THE WHITING-TURNER CONTRACTING COMPANY. ("WTC" or "Plaintiff") and Defendants Mollerup and EMCC, which issued a performance bond surety on behalf of Mollerup. WTC's filed its Complaint in the

1 Eighth Judicial District Court of Nevada on December 6, 2024¹ and served the same by way of
2 Acceptances of Service dated December 19, 2024 (EMCC) and December 20, 2024 (Mollerup)
3 respectively. Accordingly, and pursuant to 28 U.S.C. § 1446, this Notice of Removal is timely
4 filed.

5 Plaintiff's Complaint alleges (1) Breach of Contract, (2) Breach of Implied Covenant of
6 Good Faith and Fair Dealing, (3) Breach of Warranty, (4) Express Indemnity, (5) Equitable
7 Indemnity, (6) Implied Indemnity, (7) Unjust Enrichment, (8) Negligence, (9) Claim Against
8 Performance Bond, and (10) Declaratory Relief.² Plaintiff's Complaint alleges that it has been
9 damaged in an amount exceeding \$6,000,000.00.³

10 As more fully set forth below, this case is properly removed to this Court pursuant to 28
11 U.S.C. § 1441 because Defendants Mollerup and EMCC have satisfied the procedural requirements
12 for removal and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
13 1332(a). Mollerup and EMCC filed this Notice of Removal jointly and mutually consent to the
14 removal.

15 II. REMOVAL IS PROPER IN THIS CASE

16 A. Complete Diversity Exists Between Plaintiff and Defendant.

17 Plaintiff is a Maryland corporation with its principal place of business in Maryland, and for
18 jurisdictional purposes, is a citizen of Maryland. *See* U.S.C. § 1332(c)(1) ("a corporation shall be
19 deemed to be a citizen of any State by which it has been incorporated and of the State where it has
20 its principal place of business"). Defendant Mollerup is a Utah corporation with its principal place
21 of business in Utah. Defendant EMCC is an Iowa insurance company with its principal place of
22 business in Iowa. There are no other parties in this action at this time and Defendants understand
23 that additional parties that may be subsequently joined will not destroy diversity. Accordingly,
24 complete diversity exists and is expected to continue to exist even with anticipated joinder of
25 additional parties.

26
27
28 ¹ A true and correct copy of the Complaint is submitted herewith as **Exhibit 1**.

² See Complaint (**Exhibit 1**) at ¶¶ 31-126.

³ See Complaint ¶¶ 36, 72, 81, 109, 117, 126.

B. The Amount in Controversy Exceeds \$75,000.00.

A preponderance of evidence supports the amount in controversy exceeds \$75,000. *See Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-404 (9th Cir. 1996); *Guglielmino v. McKee Foods Corp.*, 2007 WL 2916193 (9th Cir. Oct. 9, 2007). Here, Plaintiff's Complaint expressly alleges damages in excess of \$6,000,000.00.⁴ Additionally, Plaintiff seeks recovery "for the amount of the Performance Bond" issued by EMCC,⁵ which bond Plaintiff expressly alleges to be in the penal sum of \$5,831,700.00.⁶ Based on these allegations, it is clear Plaintiff's claimed damages are in excess of \$75,000. *See Guglielmino*, 2007 WL 2916193, slip op. at n.5. Accordingly, the jurisdictional amount is satisfied in this case.

III. MOLLERUP AND EMCC HAVE SATISFIED THE PROPER PROCEDURAL REQUIREMENT FOR REMOVAL

This notice is timely filed within 30 days of service of the Complaint and summons. 28 U.S.C. § 1446(b). Specifically, the Complaint was filed on December 6, 2024 and was served by way of Acceptances of Service dated December 19, 2024 (EMCC) and December 20, 2024 (Mollerup) respectively. Accordingly, and pursuant to 28 U.S.C. § 1446, this Notice of Removal is timely filed.

Venue, for removal purposes, properly lies in the United States District Court for the District of Nevada pursuant to 28 U.S.C. § 1446(a) because it encompasses the Eighth Judicial District Court, where this action was originally brought.

Defendants will file a copy of this Notice of Removal with the Clerk of the Eighth Judicial District Court and will serve a copy on Plaintiff's counsel as required by 28 U.S.C. § 1446(d). Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and orders that were filed in the state court action are attached hereto as **Exhibit 1**.

⁴ See Complaint ¶¶ 36, 72, 81, 109, 117, 126.

⁵ See Complaint, Prayer for Relief.

⁶ See Complaint ¶ 114.

1 **IV. CONCULSION**

2 For all the above reasons, it is proper for Defendants to remove this action from the Eighth
3 Judicial District Court for Clark County, Nevada to the United States District Court for the District
4 of Nevada.

5 Dated this 17th day of January, 2025.

6 **PEEL BRIMLEY LLP**

7 */s/ Eric Zimbelman*

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17 **FAUX LAW GROUP**

18 */s/ Kurt Faux*

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 17th day of January, 2025, I caused the above and foregoing document, **NOTICE OF REMOVAL TO FEDERAL COURT**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below:

/s/ Christopher Tertipes

An employee of **PEEL BRIMLEY, LLP**

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